

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

<b>IN THE MATTER OF:</b>	)	<b>Administrative Cause</b>
	)	<b>Number: 13-001A</b>
	)	
<b>READOPTION OF 312 IAC 1</b>	)	
<b>PROVIDING DEFINITIONS</b>	)	<b>(LSA Document #13-169(F))</b>

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE**

**A. INTRODUCTION**

For consideration is readoption of 312 Ind. Admin Code § 1 which provides definitions with broad application to the Department of Natural Resources, Historic Preservation Review Board, and Natural Resources Commission. 312 IAC § 1 can be accessed through the Legislative Services Agency website at [www.in.gov/legislative/iac/T03120/A00010.PDF](http://www.in.gov/legislative/iac/T03120/A00010.PDF).

In April 2002, the Commission approved delegations of authority with respect to readoptions. If rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The rules codified under 312 IAC § 1 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 8, 2013. The convention is to readopt rules by article, and 312 IAC § 1 is now submitted for consideration as to final action.

**B. READOPTION ANALYSIS REQUIRED UNDER IC § 4-22-2.5-3.1**

Stephen L. Lucas, Director of the Commission's Division of Hearings, is the Small Business Regulatory Coordinator for this rule readoption. Lucas provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC § 1:

**Economic Impact Statement**

LSA Document #13-169

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses  
Estimated Number of Small Businesses Subject to this Rule:**

Proposed is the readoption of 312 IAC 1 under IC 4-22-2.5 without amendment. The definitions in 312 IAC 1 apply throughout 312 IAC unless “a definition in this article conflicts with a definition of specific applicability in another part of [312 IAC] title or in a statute that controls another part of [312 IAC], the definition of specific applicability controls”. 312 IAC 1-1-1

The definitions have no direct regulatory impact, but are important to a number of Department programs. The definitions within 312 IAC 1 facilitate program consistency.

**Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:**

312 IAC 1 is proposed to be readopted in its current form without amendment, and would not impose requirements or costs on small businesses.

**Estimated Total Annual Economic Impact on Small Businesses to Comply:**

The readoption of 312 IAC 1, in its current form, would not create an economic impact on small businesses.

**Justification Statement of Requirement or Cost:**

Not applicable.

**Regulatory Flexibility Analysis of Alternative Methods:**

The Commission does not propose an alternative regulatory method since the proposal has no impact on small businesses. Definitions codified at 312 IAC 1 provide clarification to rules throughout 312 IAC.

**MOST RECENT SMALL BUSINESS IMPACT ANALYSIS**

**REVIEW UNDER IC 4-22-2.5-3.1**

**LSA #13-169**

(Administrative Cause No. 13-001A)

**The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared**

Proposed is the readoption of 312 IAC 1 under IC 4-22-2.5 without amendment. The definitions in 312 IAC 1 apply throughout 312 IAC unless “a definition in

this article conflicts with a definition of specific applicability in another part of [312 IAC] title or in a statute that controls another part of [312 IAC], the definition of specific applicability controls”. 312 IAC 1-1-1

Since readoption in 2007 (LSA Document #07-111(F)), certain definitions within 312 IAC 1 have been amended in four separate rule packages. (1) The terms "boat" and "watercraft" were amended to clarify the two terms are equivalent, and the term "motorboat" was also defined (LSA Document #06-333(F)). (2) The definitions of "board" and "navigable" were amended under LSA Document #07-486(F). (3) The definition of "lake" was amended (LSA #08-286(F)) to provide consistency with a statutory definition (IC 14-26-2), and for consistency with other statutory structures where the term "lake" or "small lake" is used. (4) "License" was amended to restructure the definition for application to the Department of Natural Resources under LSA Document #10-668(F). The Economic Impact Statements for three of the rule packages, LSA #08-286(F), LSA Document #07-486(F), and LSA #10-668(F) indicated that the amendments to the definitions did not impose costs or requirements on small businesses. The Economic Impact Statement filed for LSA Document #06-333(F) did not address the impact to small businesses regarding amendments to the terms "boat" or "watercraft"; however, the amendments were considered technical and were necessary in order to provide clarification of the terms.

**Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)**

No alternative regulatory methods were proposed in the Economic Impact Statements prepared in the rule amendment packages listed in the previous section. In this instant rule package 312 IAC 1 is proposed to be readopted in its current form without amendment, and would not impose requirements or costs on small businesses.

**Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements**

The Commission does not propose an alternative regulatory method since the proposal has no impact on small businesses. Definitions codified at 312 IAC 1 provide clarification to rules throughout 312 IAC.

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” The requirements of Executive Order 13-03 were restated, along with additional compliance information, in Financial Management Circular 2013-01. On March 21, 2013 the former DNR Director, Robert E. Carter, Jr. submitted correspondence to the Office of Management and Budget seeking an exception from the moratorium. On May 2, 2013 Christopher D. Atkins, Director, Office

of Management and Budget, wrote to all agency heads stating the moratorium set forth in Executive Order 13-03 was not applicable to readoptions, and an exception did not need to be sought or received.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on May 9, 2013. In a letter dated July 12, 2013, Christopher D. Atkins recommended that the proposed rule readoption be approved.

**C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION**

On May 8, 2013, the “Notice of Intent to Readopt” 312 IAC § 1 was posted to the *Indiana Register* at 20130508-IR-312130169RNA as anticipated by Ind. Code § 4-22-2.5-2 and IC § 4-22-2.5-4. The notice indicated an intention to readopt the entirety of 312 IAC § 1 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request was received. The Commission may either submit the rule for filing with the Publisher under IC § 4-22-2-35 or elect the procedure for readoption under IC § 4-22-2. The recommendation is that the Commission approve 312 IAC § 1 for readoption, without amendment for subsequent filing with the Publisher.

Dated: July 31, 2013

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Stephen L. Lucas  
Hearing Officer